

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Winfred Darnell Benson,)	C/A No. 2:10-0030-JFA-RSC
)	
Petitioner,)	
)	
v.)	ORDER
)	
Robert M. Stevenson, III,)	
)	
Respondent.)	
_____)	

The *pro se* petitioner, Winfred Darnell Benson, Jr., brings this action pursuant to 28 U.S.C. § 2254. He is an inmate with the South Carolina Department of Corrections. In his petition, Benson challenges the South Carolina Supreme Court's ruling in his state criminal case.

The Magistrate Judge assigned to this action¹ has prepared a thorough Report and Recommendation and opines that respondent's motion for summary judgment² should be granted because the petition is untimely. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation and without a hearing.

The petitioner was advised of his right to file objections to the Report and

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner responded to the motion.

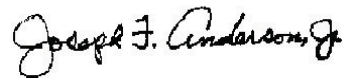
Recommendation, which was entered on the docket on January 21, 2011. However, the petitioner failed to file objections. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper and incorporates the Report herein by reference. Accordingly, the respondent's motion for summary judgment is granted and this action is dismissed with prejudice.

A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (West 2009). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In the instant matter, the court finds that the petitioner has failed to make "a substantial showing of the denial of a constitutional right." For this reason, and for those stated herein, the petitioner's motion for a certificate of appealability is denied.³

IT IS SO ORDERED.

February 24, 2011
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

³ On December 1, 2009, the Rules governing Section 2254 and 2255 cases in the United States District Courts were amended to require that the district court issue or deny a certificate of appealability when a final ruling on a habeas petition is issued. See Rule 11(a) of the Rules governing 28 U.S.C. § 2254 and 2255.